

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, EX REL.
GRANT ESHOO,

Plaintiff,

v.

PROJECT SENTINEL,

Defendant.

Case No. 12-cv-02171-JST

ORDER TO UNSEAL

On February 8, 2013, the United States notified the Court pursuant to 31 U.S.C. 3730(b)(4)(B) that it declines to intervene in this action and moved the Court to unseal only certain portions of the case file pursuant to 31 U.S.C. 3730(b)(2). In particular, the Government requests, via a form proposed order, that the Court unseal only the complaint, summons, scheduling order, declination to proceed before a magistrate judge, reassignment to a district judge, and the Government's Notice of Election to Decline Intervention.

The false claims statute provides only that "[t]he complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders." 31 U.S.C. 3730(b)(2). However, courts generally presume that lifting the seal in the entire case is appropriate. In this district, to overcome that presumption, the Government must at least establish that unsealing the case file will "(1) reveal confidential investigative methods or techniques; (2) jeopardize an ongoing investigation; or (3) harm non-parties." *United States ex rel. Lee v. Horizon W., Inc.*, No. 00-2921, 2006 WL 305966 (N.D. Cal. Feb. 8, 2006) (Armstrong, J.) (noting "if the documents simply describe routine or general investigative procedures, without implicating specific people or providing substantive details, then the Government may not resist disclosure"). See also *United States ex rel. Costa v. Baker & Taylor, Inc.*, 955 F.Supp. 1188, 1191

(N.D.Cal.1997) (Walker, J.) (examining public's right to access to court records in false claims cases; noting general presumption of openness).

Here, the Government makes no attempt to explain why the case file should not be unsealed in its entirety. Indeed, the only other documents in the case file apart from those identified by the Government for unsealing relate to the scheduling of case management conferences — documents which are routine and purely procedural in nature.

Because the documents at issue are clearly not privileged or protectable on any grounds, and because the Government fails to make any showing regarding their sealing, the Court orders as follows:

1. The following documents in the Court's file in this action are hereby unsealed: the complaint, the summons, the ADR scheduling order, the consent/declination to proceed before a magistrate judge, the clerk's notice of impending reassignment to a district judge, the two orders reassigning this case to district judges, and the Government's Notice of Election to Decline Intervention.
2. This seal is hereby lifted as to all matters occurring in this action after the date of this Order.
3. Unless the Relator voluntarily dismisses this action, he shall serve upon the Defendant the Complaint, the Government's Notice of Election to Decline Intervention, and this Order to Unseal.
4. Pursuant to 31 U.S.C. 3730(c)(3) and the Government's request, the parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States. The United States may order any deposition transcripts at its expense in the future. The parties shall serve all notices of appeal on the United States as well.
5. Should the Relator or Defendant propose that this action be dismissed, settled, or otherwise discontinued, the moving party shall provide the United States with notice.
6. All orders of this Court in this action shall be sent to the United States.
7. The Government shall have five court days to supplement its Notice of Election to Decline Intervention by specifically identifying the document or documents in the case file that the

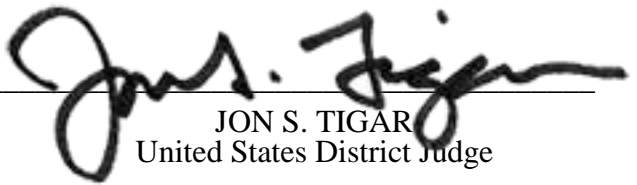
Government contends should remain under seal, the specific reasons for the Government's contention, and appropriate citation to authority.

8. Should the Government instead consent to the unsealing of the case file in its entirety, the Government shall so indicate within five court days.

9. Should the Government fail to file either a consent to unsealing or a supplement to its Notice regarding documents to be sealed within five court days, the Clerk is hereby directed to unseal the case file in its entirety.

IT IS SO ORDERED.

Dated: March 27, 2013



JON S. TIGAR
United States District Judge

United States District Court
Northern District of California